IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 606 of 1990

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIDDHAKSHETRA JAIN BHOJAN SHALA

Versus

GOVT. LABOUR OFFICER & MINIMUMWAGES ACT INSPECTOR

Appearance:

MR PC MASTER FOR MR HB SHAH for Petitioner

MR LR PUJARI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 28/02/2003

ORAL JUDGEMENT

1. By filing instant petition under Article 226 of the Constitution, the petitioner i.e. Siddhakshetra Jain Bhojan Shala, situated at Palitana, has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash notice dated January 15, 1990, issued by Government Labour Officer and Inspector, appointed under the Minimum Wages Act, Bhavnagar by which the petitioner has been informed that the petitioner has committed breach of section 12 of the Minimum Wages Act, 1948 (the Act for short) and Rules 22, 25(2), 26(2) and 26-A of the Minimum Wages (Central) Rules, 1950 (`the Rules' for short), and warned of criminal prosecution if

defects pointed out in the said notice are not rectified.

2. The petitioner is a Trust registered under the provisions of the Bombay Public Trusts Act, 1950. It is running a Bhojan Shala i.e. an eating house at Palitana. It claims that it is running the Bhojan Shala primarily and essentially for the benefits of Jain pilgrims visiting religious shrine on Shatrunjaya Hills at Palitana, which is a well known centre of Jain pilgrimage. The Government Labour Officer and Inspector appointed under the Minimum Wages Act, Bhavnagar, visited the eating house on January 11, 1990. He made inquiry and asked the Manager of the eating house to produce certain records for inspection. He found that the petitioner is registered as an eating house under the provisions of the Bombay Shops and Establishments Act, 1948. He recorded statement of Mr. Himmatlal Dalichand Shah, who was Manager of the petitioner and who was personally available at the time of inquiry. The statement of Mr. Himmatlal Dalichand Shah indicated that the petitioner was/is charging Rs.5/- per ordinary/ simple meal and Rs.7/- for meal with sweets from pilgrims visiting the eating house. The statement of the Manager further showed that only those pilgrims were offered the meals who were inclined to offer gifts. He further found that 13 employees were employed by the petitioner. On making an inquiry he was satisfied that the provisions of the Act were applicable to the petitioner and proceeded to inspect registers maintained by the petitioner. He found that no wage slip or attendance card was issued to any of the employees and therefore concluded that there was breach of provisions of Rule 26(2) and 26-B of the Rules. He also found that no register was maintained by the petitioner indicating payment of overtime which amounted to breach of provisions of rule 25(2) of the Rules. Moreover, no visit book for inspection by a competent authority appointed under the provisions of the Rules was maintained by the petitioner and therefore he concluded that there was breach of Rule 26-A of the Rules. It was also noticed that notice containing the minimum rates of wages fixed together with abstracts of the Act and the Rules made thereunder was not displayed and the provisions of rule 22 of the Rules were not complied with. Further, on inspection of a wage register, he found that the employees were paid less than the minimum wages fixed under the Act which amounted to breach of provisions of section 12 of the Act. Therefore, he issued notice dated January 15, 1990 calling upon the petitioner to comply with the provisions of the Act and the Rules and warned the petitioner that failure to do so would result into criminal prosecution.

According to the petitioner, the notice dated January 15, 1990 is illegal as well as without authority of law and therefore should be set aside. What is claimed by the petitioner is that the petitioner is neither a hotel nor a restaurant nor an eating house and therefore the impugned notice could not have been served on the petitioner, more particularly when the petitioner Trust is not making any profit by running the eating house. The petitioner has referred to statutory provisions of the Act as well as the Bombay Shops and Establishments Act, to contend that the petitioner Trust is not carrying on the business of supplying meals to the public in general at Palitana and therefore the impugned notice is liable to be set aside. According to the petitioner, the employees serving in the Bhojan Shala cannot be treated as employees engaged in the Scheduled employment and therefore the Government Labour Officer is not justified in applying the provisions of the Act to the petitioner. It is pleaded by the petitioner that the petitioner Trust has been incurring losses while running the Bhojan Shala and as Jain Sadhus and Sadhvis are supplied with boiled water in the morning and meals twice a day free of charge, the decision to apply the provisions of the Act to the petitioner is arbitrary and should be set aside. Under the circumstances the petitioner has filed the present petition and claimed relief to which reference is made earlier.

3. On service of notice Mr. Sudhir Madhavlal Dave, Government Labour Officer, Bhavnagar, has filed affidavit in reply controverting the averments made in the petition. After narrating the facts in brief, it is averred in the reply that the petitioner is running an eating house as defined in the Bombay Shops and Establishments Act, 1948 and as the case of the petitioner falls within the meaning of Scheduled Employment defined in the Act, the provisions of the Act are applicable to the petitioner. Further affidavit in reply has been filed on behalf of the respondent no.1 by Mr. A.M. Shah, Incharge Government Labour Officer, Bhavnagar, stating that the petitioner had shown its willingness to comply with the provisions of the Act and therefore the plea raised by the petitioner to the effect that the provisions of the Act are not applicable to it should not be considered by the Court having regard to the well known principle of estoppel. The petitioner has filed an affidavit accompanied with copies of Auditor's Report and Balance Sheet to show that the Bhojan Shala is being run from the funds received by way of donations and it is incurring losses.

4. Mr. P.C. Master, learned counsel for the petitioner urged two points for consideration of the Court. The first point urged is that before concluding that the provisions of the Act are applicable to the petitioner, no hearing was given to the petitioner and as the said decision is contrary to the well established principles of natural justice, the impugned notice should be set aside. The second point pleaded is that there is no profit motive in running the Bhojan Shala and as the petitioner is not an establishment within the meaning of sub-section (8) of section 2 of the Bombay Shops and Establishments Act, 1948, the decision of the competent authority holding that the provisions of the Act are applicable to the petitioner should be set aside.

5. Mr. L.R. Pujari, learned AGP submitted that before coming to the conclusion that the provisions of the Act are applicable to the petitioner, on the spot inquiry was made by the Government Labour Officer in which the statement of Manager of the Petitioner was recorded and other relevant documents considered. Under the circumstances, Mr. L.R. Pujari, learned AGP contended that it would be wrong to plead that principles of natural justice were not complied with. According to Mr. Pujari, learned AGP, in view of the amendment carried out by Guajrat Government in the Schedule to the principal Act in Part I, an employment in any residential, hotel, restaurant or eating house as defined in the Bombay Shops and Establishment Act, 1948 would be a scheduled employment within the meaning of section 2(g) of the Act and as the eating house being run by the petitioner falls within the definition of restaurant or eating house, as given in section 2(25) of the Bombay Shops and Establishments Act, 1948, the decision of the competent authority that the provisions of the Act are applicable to the petitioner cannot be said to be erroneous. Thus, according to the learned Assistant Government Pleader, the petition is devoid of substance and should be dismissed.

6. The Court has considered the submissions advanced at the bar and documents forming part of the petition. The plea that principles of natural justice have been violated before holding that the provisions of the Act are applicable to the petitioner and therefore the impugned notice should be set aside has no substance. The notice dated January 15, 1990 would indicate that the Government Labour Officer had visited the premises on January 11, 1990. It may be mentioned that the Government Labour Officer and Inspector appointed under the Act is entitled to inspect any premises for the

purpose of compliance of provisions of the Act. The Government Labour Officer at that time found that Mr. Himmatlal Dalichand Shah, the manger of the petitioner was present and that the petitioner was registered under the provisions of the Bombay Shops and Establishment Act, 1948 as an eating house. The statement of the Manager was recorded by the Officer which indicated that the petitioner was charging Rs.5/- for simple/ordinary meal and Rs.7/- for meal with sweets to pilgrims who were ready to offer gifts to the petitioner. After making inquiry the Government Labour Officer formed an opinion that the provisions of the Act are applicable to the petitioner. As observed earlier, necessary registers were produced by the Manager of the petitioner himself and his statement was recorded. Thus, after making necessary inquiry and taking into consideration the say of the petitioner it was concluded that the provisions of the Act are applicable to the petitioner. Having regard to the contents of notice dated January 15, 1990, which is produced at Annexure-A to the petition, it is difficult to agree with the submission made on behalf of the petitioner that principles of natural justice were not complied with before holding that the provisions of the Act are applicable to the petitioner.

7. So far as the question of applicability of the provisions of the Act to the petitioner is concerned, the Gujarat Government has amended the Schedule to the principal Act and an entry to the effect that employment in any residential hotel, restaurant or eating house as defined in the Bombay Shops and Establishments Act, 1948 is inserted in the Schedule to the Act. It is an admitted position that the petitioner is supplying meals to the pilgrims and charges them for the same. An eating house falls within the definition of "establishment" as given in section 2(8) of the Act and therefore the petitioner is registered as an establishment under section 7 of the Act. The fact that the petitioner has registered itself as an eating house under the provisions of the Bombay Shops and Establishment Act, 1948 would itself indicate that it is an establishment as defined in the said Act. Even section 2(25) of the Bombay Shops and Establishments Act, 1948 provides that restaurant or eating house means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises. There is no manner of doubt that the petitioner is running an eating house. The plea that running of eating house is not a business because there is no element of profit making cannot be accepted in view of decision of this Court in State of

Gujarat Vs. Sthanakvasi Jain Mota Sangh and others, 1992(1) GLR 19. Element of profit is not sine qua non for the application of the provisions of the Act. If the tests laid down in the said decision to the facts of the present case are applied, there is no manner of doubt that the petitioner has employed 13 employees and the relation of the petitioner with those employees is that of an employer and employee, which means that the ingredients of section 2(a) and 2(i) of the Act are satisfied. Further, the petitioner's case is fully covered by the phrase "scheduled employment" and that it is not necessary that the petitioner must earn profit while running the Bhojan Shala. As explained in the State (supra), denying the employees of their minimum wages amounts to earning profit. Further, as held in Ahmedabad Panjarapole Sanstha Vs. Misc. Mazdoor Sabha and others, 1986(2) GLR 983, even a public trust or a charitable institution like Panjarapole is an "industry". Applying the tests laid down therein to the facts of the present case, the petitioner will have to be regarded as an "industry". Having regard to the totality of the facts of the case, it cannot be said that the decision that the provisions of the Act are applicable to the facts of the case of petitioner is erroneous so as to warrant interference of this court in instant petition, which is filed under Article 226 of the Constitution. The petition is, therefore, liable to be dismissed.

8. For the foregoing reasons the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs. The interim relief granted earlier is hereby vacated.

9. At this stage, learned counsel for the petitioner prays that interim relief granted earlier be continued for a period of one month to enable the petitioner to approach higher forum. In my view such a relief cannot be granted and is not in the interest of the employees. Therefore, the relief prayed for is rejected.

[J.M. PANCHAL J.]

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